

**Comments of Michael Bracy**  
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**FTC Forum on Peer to Peer Technologies**  
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My name is Michael Bracy. I am a founder and the Policy Director of the Future of Music Coalition, and I appreciate the opportunity to speak with you today. The Future of Music Coalition is a nonprofit that identifies, examines, interprets and translates the challenging issues at the intersection of music, law, technology and policy.

Today, I would like to add our perspective, and place the discussions of peer-to-peer technologies in a broader context. I also will speak about the results of a study that FMC worked on with the Pew Internet and American Life Project concerning artists' and citizens' attitudes toward the Internet, copyright and peer-to-peer technologies. I have a lot of ground to cover in a short amount of time, so I would encourage you to visit our website ([www.futureofmusic.org](http://www.futureofmusic.org)) to learn more about our work and to read the complete Pew study.

The music community is in the midst of a necessary and welcome transition to a digital business model. Historically, musicians have aligned themselves with major labels for a variety of reasons, three of which are:

1. Access to resources, including recording budgets, staff, tour support
2. Access to distribution – to retail chains, promotion, infrastructure
3. Access to promotion – commercial radio, TV, print, Internet

This model has worked very well for certain members of the music community, and very poorly for others. It has been the basis of many solid careers. It has also been fraught with challenges, including accusations of unfair contracts and accounting practices, and questions about business tactics and priorities. FMC has worked in coalition with many other organizations to address these concerns.

Two significant developments forever altered the music landscape in the 1990s: Market Consolidation and Digital Music. FMC and members of the music community have been outspoken with our concerns about the impact of concentrated control in the music, radio, retail and concert industries. I won't take up time on specifics, other than to state that many in the music community believe these changes have had significant negative implications for both musicians and music fans.

At the same time that the music landscape was consolidating, technological innovation was reshaping the way that music was recorded, manufactured, promoted and distributed. Digital studios and software dramatically reduced production costs. The Internet vastly increased promotional and sales opportunities. The marketplace for independent music exploded, as indie labels proliferated to serve the expanding artist community. While

much of this music was simply not aimed at the kinds of mass audiences of interest to major labels or radio, there clearly was a market for this music, and alternate and Internet-based economies began to take shape.

As these digital models took flight, some companies and labels offered more equitable business relationships. Some allowed the artists to keep their copyrights, some offered creative control, others provided higher royalty rates. Musicians have embraced those that allow greater independence, direct contact with their fans and more control over their careers. Take, for example, CD Baby, which is an online store akin to Amazon.com, where musicians can sell their CDs. As of yesterday, nearly 80,000 independent artists have their work available on the store, and CD Baby has paid out over \$11 million directly to musicians.<sup>1</sup>

For artists and independent labels, the Internet allows for streamlined promotion and distribution via digital music stores, Internet radio, and websites, and gives musicians the tools to easily and inexpensively connect directly with music fans. In this context, the results of the Pew study released December 5 should not be surprising, or controversial. The report found that artists have a broad range of opinions when asked their views about digital music technologies. The report indicated:

Musicians use the Internet to promote and sell their work.

- 87% of the 2700 musician respondents said they promote, advertise or display their music online
- 83% provide free samples or previews of their music on the Internet.
- 69% of the respondents said they sell their music online, either on their own website or via stores like Amazon.com or CDBaby.<sup>2</sup>

However, musicians are divided over file-sharing.

There is no clear consensus among musicians regarding the effects of online file-sharing on artists. The Pew report found that:

- 35% of the musician respondents agreed with the statement that file-sharing services are *not bad* for artists because they help promote and distribute an artist's work
- 23% agreed with the statement that file-sharing services *are bad* for artists because they allow people to copy an artist's work without permission or payment
- 35% of those surveyed agreed with *both* statements.<sup>3</sup>

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<sup>1</sup> About CD Baby, <http://www.cdbaby.com/about>

<sup>2</sup> "Artists, Musicians and the Internet", Pew Internet & American Life Project, December 5, 2004, p. 31  
[http://www.pewinternet.org/PPF/r/142/report\\_display.asp](http://www.pewinternet.org/PPF/r/142/report_display.asp)

<sup>3</sup> Ibid., pp. 34-35.

However, when Pew broke the results of this question down by the musicians' income and time, emerging artists were more likely to agree that file sharing services are *not bad* for artists because they allow them to promote and distribute their works. On the other hand, artists who make the majority of their income from being a musician or songwriter were more likely to agree that file sharing services *are bad* for artists (35% as opposed to 23% of all musicians).<sup>4</sup>

Given these various factors – an emerging broadband marketplace, extensive consumer demand for digital music distribution models, and an explosion of the amount of music released – the fundamental opportunity, and challenge, is to facilitate the development of a legitimate digital music marketplace. This marketplace is already emerging, as SoundScan reported that in the first four months of 2004, consumers bought 35.3 million music downloads, and it projects that at least 100 million will be sold in 2004 overall, making up about 1% of the recorded music market.<sup>5</sup>

The core question, then, is how to manage this transition to a legitimate digital marketplace in a way that benefits musicians and music fans. From our standpoint, there have been some significant developments to date that cannot be overlooked. In 1995, Congress passed Digital Performance Right in Sound Recordings Act. This law granted a performance right for the digital transmission of sound recordings, and led to the creation of SoundExchange, which has emerged as a respected, functioning collection and distribution agency that exists as a compliment to ASCAP and BMI. SoundExchange recently paid \$6.5 million in royalties, making their total payouts since 2001 over \$22 million.<sup>6</sup> We also must recognize music fans' excitement over new technology-enabled models, including satellite radio, digital subscription services like Rhapsody, Emusic and Napster, music blogs and ezines, the growth of Internet radio and webcasting, and digital download stores like iTunes. This trend is a critical precursor that demonstrates consumers' willingness to use legitimate digital services. If we build it, they will come.

The point is not that this industry is now perfect, or that we even can see the "solution". Rather, we all should acknowledge that the digital transition is complicated. In reality, it includes multiple competing markets, dependent on evolving technological innovation and regulatory policy decisions. The future music marketplace will be driven by consumer adoption of broadband to the home, an area full of regulatory and technological uncertainty of its own. Spectrum policy and the transition to digital terrestrial radio will play a significant role in determining how consumers are able to access digital content, and how performers will be compensated in the future. Ideally, musicians and music fans will be central to determining the success of new business models, consumer products and software applications.

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<sup>4</sup> Ibid., p. 35.

<sup>5</sup> "US recorded music market maintains its recovery; online cos achieve sales of 35m downloads in 2004", Phil Hardy, *Music & Copyright*, May 26, 2004.

<sup>6</sup> "SoundExchange Announces Its Fall 2004 Allocation of Over \$6.5 million in Performance Royalties to Artists and Labels", November 2004 <http://www.soundexchange.com/news/news.html>

Future of Music Coalition has been fortunate to work with well over a dozen different organizations, representing hundreds of thousands of musicians, songwriters, retailers, promoters, community broadcasters and fans. The transition to a digital economy represents real threats and real opportunities to these communities. That being said, there are core themes that cut across all aspects of the music community. These shared values can serve us going forward.

1. Whenever possible, artists must maintain control over copyright and career decisions.
2. Artists must be able to compete fairly in the marketplace, meaning they must be able to receive compensation for their work and have access to consumers.
3. Artists must be seen by the policymaking community as valued stakeholders in policy debates.

As I mentioned there are many, many organizations with well reasoned, articulate positions on both the macro concerns and specific micro issues. You've heard from one or two of them over the last two days. Our hope is that policymakers across the board will grant at least as much weight to the viewpoints of artists, songwriters and the music community than to those of the affected industries.

In the summer of 2000, FMC said the only antidote to an illegal Napster is a legal Napster. We meant it then and we mean it today. In a world of breathtaking technological innovation, the focus cannot be on restricting information, but rather on building new consumer business models. We also said that these technology debates are not black and white, but rather rest mostly in the grey. The role of the music community is not to pick sides, or even perceive that there are sides to pick. Rather, this is an opportunity for the music community to identify what is right with the historical models and attempt to place that in a digital context where artists can control their work and receive fair compensation for their efforts, and music fans can have unprecedented access to music at a variety of price points, using a variety of products.

According to the Pew Internet report, there are 32 million Americans who consider themselves artists and more than three times as many who pursue some sort of artistic endeavors in their lives. The report also suggests that up to 10 million Americans earn at least some money from their performances, songs, paintings, videos, sculptures, photos or creative writing. Clearly, artists are economic actors in these policy debates, both as the creators and as consumers. We urge you to engage with the music community and its advocates in upcoming discussions.

Again, I want to thank you for the opportunity to participate in this discussion, and I look forward to answering any questions you may have.